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Date: 3/29/06

Matthew J. Laskoski

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

Evans et al.

Serial No. 10/798,892

Art Unit: 3651

Filed: March 12, 2004

Examiner: Timothy R. Waggoner

For: MOIST TOWELETTE PACKAGING

**RESPONSE**

To the Director of the Patent and Trademark Office

Sir:

In response to the office action dated March 1, 2006 the Applicant provisionally elects claims 1, 13 - 15, 18 - 24, 33, 34, and 55 - 69 of Species I, drawn to Figures 1 - 4 and traverses the requirement for restriction. All claims are considered generic.

The inventions as described in the claims are neither independent nor distinct. In fact, the inventions as claimed arise from the same inventive effort. Where inventions are neither independent nor distinct, restrictions should not be required. Where inventions arise from the same inventive effort, restriction should not be required.

MPEP 802.01 points out that a sub-combination and a combination are not independent inventions, and that a process and an apparatus used in the practice of the process are not

independent inventions. That same section points out that "independent" means that there is no disclosed relationship between the subjects disclosed.

The Examiner has not made any requirement based on the subject matter being independent. Therefore it is understood that the Examiner concedes that the subject matter is not independent.

The Examiner's requirement for restriction is based upon his holding that the subjects are distinct. That is, as pointed out in Section 802.01, the Examiner has held that the subject matter as claimed:

are capable of separate manufacture, use or sale as claimed, AND ARE PATENTABLE  
(novel and unobvious) OVER EACH OTHER.

The Examiner has held under Section 803 that the claimed inventions:

are able to support separate patents and they are ... distinct (MPEP Section 806.05-  
806.05(i)).

However, Section 803 unequivocally states:

If the search and examination of an entire application can be made without serious  
burden, the Examiner must examine it on the merits, even though it includes claims to  
distinct or independent inventions.

So that Section 803 makes its point clearly, the serious burden requirement is repeated under the  
title:

CRITERIA FOR RESTRICTION BETWEEN  
PATENTABLY DISTINCT INVENTIONS

Section 803 goes on to state that there are two criteria for a restriction requirement: one, that the inventions must be distinct as claimed; and two, that there must be a serious burden on the Examiner if restriction were not required.

Section 803 goes on to state under GUIDELINES that an Examiner must provide reasons and/or examples to support conclusions. The Examiner has never stated that there would be a serious burden on the Examiner if restriction were not required. Indeed, there should be no serious burden on the Examiner.

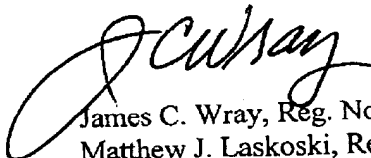
The subclasses the Examiner would be required to search are close together and are all within the subclasses which the Examiner regularly searches. Indeed, it would not be unreasonable for the Examiner to search subclasses that were closely related. Therefore restriction should not be required.

The species listed by the Examiner are not independent or distinct. The claims for Species I - Species VIII may be read on each other. MPEP 806 provides that if the inventions are not distinct as claimed, restriction is never proper.

Moreover, Section 806.05(h) emphasizes "as claimed" and falls under the cautions of 806 and 806.05, both of which state, "where the inventions are related as disclosed but are not distinct as claimed, restriction is never proper". In the present case the particular criteria and guidelines of 803 must be followed in that there must be a serious burden on the Examiner if restriction were not required. In the present case, all of the species must be searched in all of subclasses. All are properly classified and searched together, and the search for one species would not be complete without searching all of subclasses.

Reconsideration and allowance of the application are requested. Reconsideration and withdrawal of the restriction requirement are requested.

Respectfully,



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